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ABSTRACT

This document provides a variety of materials concerned with confidentiality issues in special education and suggested activities for using the materials in staff development. The first item is a list of 13 general rules for maintaining confidentiality in the internal communications of a school or school system. The second item is a list of 10 exceptions to general rules prohibiting disclosure, such as written consent, medical or psychiatric emergency, court order, or abuse. The third item lists nine basic principles for maintaining the confidentiality of education records based on the Family Educational Rights and Privacy Act (FERPA). Examples of these principles are that each school district must have a written student records policy and that parents have the right to inspect and review their children's school records. The fourth item is a list of 14 questions and answers relative to confidentiality and FERPA. The following section offers four hypothetical situations dealing with confidentiality and suggests discussion questions. The final item is a policy letter from the Family Policy Compliance Office of the U.S. Department of Education regarding the transfer of student records electronically. (DB)

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Special Education Issues in

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General Rules for Maintaining Confidentiality (Internal Communications)

- Written or oral information about student and families is shared only with other personnel who have an explicit need to know for the benefit of the student/family (not for the benefit of the provider).
- Information about one student is not shared with another student or parent under any circumstances.
- Only information which is necessary will be shared.
- The recipient will protect the information from disclosure.
- Information should not be obtained from a parent or other person based on a promise that the information so obtained will not be shared with other appropriate personnel.
- Discussions concerning confidential information are to take place in secured locations, not in hallways, stair wells, staff lounges or parking lots, on the play ground or elsewhere where others may overhear.
- Confidential written documentation or notes of oral confidential communications should be stored in secure locations, and when in use, should be shielded from the view of others approaching the desk, and should not be left on a desk at all when the staff member has occasion to leave the desk.
- Confidential information should not be left as a message with a secretary, on a voice mail or on an electronic mail system.
- Confidential information that must be mailed or carried should be placed in an envelope marked confidential; and
- Confidential information received by an agency which was not requested or is not needed should not be made part of the student's/child's record and should be returned to the sender or shredded.
- Confidentiality should be maintained regardless of how the information is obtained (written, oral, electronic).
- All staff and volunteers should be held to the same standard.
- Agencies should have an explicit policy on the confidentiality of student/child information which is coordinated with the agency's records policy.

EXCEPTIONS TO GENERAL RULES PROHIBITING DISCLOSURE

- Written consent
- Internal communication
- Medical or psychiatric emergency
- Court order
- Crime at program/against personnel
- Research/audit
- Abuse
- Qualified service organizations
- Third party payers

FERPA BASICS — EDUCATION RECORDS

1. Personally identifiable information about students must be kept confidential by public schools.

2. Each school district must have a written student records policy.

3. Parents have the right to inspect and review their children's school records, and may request copies.

4. Access to student records by school staff members must be recorded on an "access log" in each student file, and the LEA records policy must identify by title the staff members with access to each type of student record.

5. Release of student information outside the school requires parental consent, except: (1) school district defined "directory information"; (2) within the public school hierarchy; and (3) in health and safety emergencies.

6. Parental access rights transfer to adult students when they become 18 years of age.

7. Parents may request amendment of records which they consider "inaccurate, misleading, or in violation of the student's rights of privacy or other rights".

8. Notes concerning a student, made by a staff member, retained by that person and not shared with anyone are exempt from parental access.

9. Education records do not include treatment records of students 18 years or older that are maintained by a health professional.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

QUESTIONS AND ANSWERS RELATIVE TO CONFIDENTIALITY

1. **Question:** **Are all schools required to comply with the Buckley Amendment?**

   Answer: Any school that receives federal education funds from the United States Department of Education must follow the procedures required by this federal law. Reference 41 CFR 99.1

2. **Question:** **What kind of student records are parents allowed to review?**

   Answer: The Buckley Amendment applies to all records, files, documents and other materials which contain information directly relating to a student which are maintained by the school district. Reference 41 CFR 99.3

3. **Question:** **May students see the same records as parents?**

   Answer: No. While the Buckley Amendment permits students to see their own records if they are over 18, there are some records that can be withheld:

   (1) psychiatric or "treatment" records (students can, however, request that a doctor of their choice review the records for them).

   (2) financial records of their parents.
   Reference 41 CFR 99.12

4. **Question:** **Must the school show the records to parents right away?**

   Answer: No. Under the Buckley Amendment, the school has forty-five (45) calendar days to comply with the parents' request. Some schools have written procedures that establish a shorter time period. In this case the school must comply with their shorter time period. Reference 41 CFR 99.11

5. **Question:** **May parents bring someone with them such as their child or a friend to examine the records?**

   Answer: Yes. While the Buckley Amendment does not state specifically that parents have this right, other federal regulations (IDEA) state that parents may authorize others to see the records. The school may ask that parents sign a statement indicating that the friend has such permission. Reference 34 CFR 300.562

6. **Question: Who else may see a student's records without parental consent?**

Answer:

(1) school officials in the same district with a "legitimate educational interest";

*(2) School officials in another district or school system in which the student intends to enroll;

(3) various state and national educational agencies, when enforcing federal laws;

(4) anyone to whom the school must report information as required by state statute;

(5) accreditation and research organizations helping the schools;

(6) student financial aid officials;

(7) those with court orders or subpoenas. Reference 41 CFR 99.31

* This condition is subject to the requirements set forth in 41 CFR 99.34 that requires a reasonable attempt be made to notify the students parents at their last known address of the record transfer except: when the transfer of records is requested by the parent or eligible student at the sending school system; when the sending school system or agency includes a statement in its policies and procedures indicating that educational records will be forwarded on request to a school to which the student is transferring. In such a case as this, the school system or agency does not have to provide any additional notice of the transfer.

7. **Question: May probation officers see student records without parental consent?**

Answer: No. Under federal law, probation officers cannot see or receive information from student records without obtaining parental consent.

8. **Question: May parents see a list of everyone who has asked for and received information concerning their child during the year?**

Answer: Yes. The school is required to keep a list of everyone who requests and receives information with the records themselves. Parents have a right to this information. The list need not include school employees who have seen the records. Reference 41 CFR 99.32

9. **Question: If parents think information is misleading or false, how can they get such information removed from the student's record?**

Answer: First, the parents request that such information be removed and state the reason for the request. If the school refuses to do so, then the parent can request a due process hearing. The request should be put in writing and sent to the appropriate school official. Reference 34 CFR 300.564, 34 CFR 300.567, 34 CFR 300.568, 34 CFR 300.569, 41 CFR 99.20, 41 CFR 99.21 and 41 CFR 99.22

10. **Question: Who has access to student's confidential records?**

Answer: Parents have the right to inspect and review the records of their child. Students who have reached the age of majority also have the right to review their records. State education agency staff and school district personnel who are authorized to inspect records are those certified personnel and school board members with a legitimate educational interest in reviewing the records. For persons not so authorized to review records, the district must keep a log of parties obtaining access to student records, showing the name of the person given access, date access was given, and the propose for which the party was authorized to use the records. Reference 34 CFR 300.562, 34 CFR 300.571, 41 CFR 99.11, 41 CFR 99.30, 41 CFR 99.31, and 41 CFR 99.32

11. **Question: Do school board members have a right to know the names of students with disabilities?**

Answer: They have a right to the names of individual students with disabilities only for the purpose of carrying out duties of the School Board. Reference 41 CFR 99.31 and 41 CFR 99.32

12. **Question: When a request for transfer of records of a student with disabilities is received, including proper parental permission, should the district transfer all records?**

Answer: Yes. On notification of transfer, all the student's educational records shall be transferred, including behavioral records and reports contained in the cumulative file furnished to the sending school by other private or public agencies. Reference 41 CFR 99.31

13. **Question: Are parents entitled to review their child's test protocols?**

Answer: Yes. Each participating agency must permit the parents of a student with a disability to inspect and review any educational records relating to their child (including test protocols). The procedure of allowing parents to examine and discuss the protocols in the agency office under supervision would comply with the basic requirement under Reg. 300.562(a). Reference 34 CFR 300.562(a)

14. **Question:** **Who is responsible for storage of student test protocols?**

Answer: The participating agency is responsible for ensuring that test protocols are accessible regardless of where they are stored. Family Educational Rights and Privacy Act defines educational records as those which are: "(1) directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution." A school psychologist would be considered "a party acting for" the school district; therefore, records maintained by a school psychologist would be accessible. Reference 41 CFR 99.5

SUMMARY

FERPA provides parents a clear avenue through which they might ensure that the personal dignity and confidential information concerning their child be protected. It is clearly the intent of this law to provide parents a definite role in the provision of accurate record keeping and in the protection of the confidential information concerning their child.

Activity

SITUATION #1

You are a staff member working in a resource room at the junior high level. Earlier this week you attended a Child Study Team meeting on one of the 7th grade students you work with. At this meeting, the child's parents reveal that their child was the victim of child abuse. The teachers respond very sympathetically to the parents, offering support and suggestions for helping the child deal with this issue.

Yesterday, a teacher from the 6th grade team approached you wanting to know if the information he had overheard in the school hallway regarding the 7th grade student was true. If so "it would explain a lot of the child's behavior when..." The teacher persists in his questioning when you politely try to evade him.

- How will you handle this situation, knowing that at some point you may well have to work directly with this teacher in a mainstreaming situation?

SITUATION #2

You are a staff member working at the elementary school level. You work with students behavior problems. Your work brings you in contact with many parent volunteers who assist in the various classrooms throughout the school. One parent volunteer has taken a particular interest in one of the students you work with and has attempted to get information regarding the student's background from you on more than one occasion. You have successfully side-stepped her questions in the past. Today the volunteer approaches you with information regarding this particular student's home life, which she has learned from another students. She wants to know if the information is true.

- How will you handle this situation and end this volunteer's persistent questioning?

SITUATION #3

You are a staff member who works in a school vocational education program with adolescents in grades 7 and 8. You have been on the job for about 6 months. During that time you have learned to like and respect the students and staff members in the program.

About a week ago, your car broke down and you are having difficulty getting to work. Your supervising teacher offers to speak to the vice principal of your junior high since he lives in your neighborhood and would probably be willing to let you ride with him temporarily. This is arranged and you are now riding with the vice-principal each morning.

The vice-principal is friendly and talkative. He has worked in education for 30 years and has strong opinions about what is wrong with education today. He thinks too much money is being wasted on special education students. These students never seem to amount to much according to Mr. V.P. He asks you to tell him about Mike, one of your students. He saw him arguing with a teacher and refusing to follow directions. He thinks Mike is a troublemaker. Mr. V.P. is not going to let you off the hook easily, he really wants to know about this student!

- How will you handle this situation?

SITUATION #4

You are a staff member in a special classroom of ten boys and girls, six to eight years of age, who have physical problems. You have had this job for about five years and love it. Your excellent work has been recognized by your co-workers and you are proud that your professional attitude has been praised.

The church you attend has a young, new minister who has made counseling youth and parents part of his ministry. You don't know the minister very well but his efforts in the community seem sincere and well-intended. Tonight you are attending a church supper. You know from a conversation with Stanley's mother, one of the students in your class, that the family has been receiving counseling from the new minister.

The Reverend Smith has joined you at your table and has been making small talk. Now he is asking you about Stanley, one of your students. How is he doing in school? Do his parents' problems affect him? How does Stanley feel about his parents? Reverend Smith is persistent in his questioning and his insistence that he only wants to help Stan's family.

- How will you handle this situation without offending the minister and still maintain your professional standards?

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

" " 24 1995

Mr. John Copenhaver
Director
Mountain Plains Regional Resource Center
Utah State University
1780 North Research Parkway, Suite 112
Logan, Utah 84321

Dear Mr. Copenhaver:

This is in response to your April 4, 1995, inquiry regarding requirements related to special education records. Your letter, which you addressed to Dr. Tom Hehir, Office of Special Education Programs, was forwarded to this Office for response on June 28, 1995, because we administer the Family Educational Rights and Privacy Act (FERPA), which relates to your concerns.

You ask in your letter whether it is "permissible to transfer special education student records by fax or computer networks." In this regard, you state:

> It is not uncommon to see special education student records transferred from one agency to another via fax or computer networking.

You also ask whether it is permissible to include notices that a student is receiving special education services in a student's cumulative file. You state:

> Many school districts insert a notice in the student's cumulative file indicating there is a separate special education file located in another office.

FERPA generally protects parents' and students' privacy interests in "education records." The term "education records" is defined as those records which contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." FERPA applies to all education records, including the records of students who receive special education services.

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FERPA does not generally address what education records a school may or may not maintain or where the school maintains such records. Thus, under FERPA, a school would not be prohibited from placing a notice in a student's cumulative records which states that the student receives special education services and that another file exists in another office.

With regard to your question regarding the transfer of education records, FERPA generally requires that a parent or eligible student[1] provide written consent prior to the disclosure of personally identifiable information from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. For instance, prior written consent is not necessary when the disclosure is to a school official within the educational agency or institution with legitimate educational interest or when the disclosure is to a school in which the student is seeking or intending to enroll. See 34 CFR § 99.31(a)(1) and (2). For a list of the circumstances under which nonconsensual disclosures may be made, please refer to § 99.31 of the enclosed regulations.

FERPA does not generally address the manner in which education records may be disclosed. While on its face FERPA does not prohibit the transfer of education records to authorized parties by whatever means a school chooses, a school should take into consideration the potential for nonconsensual disclosures of education records resulting from a particular type of transfer. While we believe that the likelihood of an improper disclosure of education records that would result from transferring information to other school officials within an educational agency or institution by facsimile or internal computer network is minimal, it is the responsibility of each school to determine what precautions are necessary to protect education records in compliance with FERPA.

I trust that the above information is responsive to your inquiry. In addition to the regulations, enclosed are a model student records policy and a model annual notification of rights to parents. Should you have additional questions regarding this

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[1]All rights afforded parents under FERPA transfer to the student when the student becomes an "eligible student." The term "eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

matter or FERPA in general, please do not hesitate to contact this Office directly. Our current address and telephone number are:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue, SW
Washington, DC 20202-4605
(202) 260-3887

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosures

Utah State University

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